

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

KRISTI JORDAN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

Case No. 1:24-cv-7118

CRUNCH, LLC,

Defendants.

PLAINTIFF’S FIRST SET OF DISCOVERY REQUESTS

Pursuant to Rules 26, 33, 34 and 36 of the Federal Rules of Civil Procedure, Plaintiff Kristi Jordan requests that Defendant Crunch, LLC respond to the following discovery requests by February 5, 2025, consistent with the agreement of the parties and the Court’s entry of an Order (ECF No. 28) adopting the discovery and briefing schedule proposed by the parties regarding Defendant’s Amended Motion to Compel Arbitration.

DEFINITIONS

The following definitions apply throughout these discovery requests:

1. “Action” means the above referenced Case No. 1:24-CV-7118 pending in the Southern District of New York.
2. “Declaration of Chad Waetzig” (“Waetzig Declaration”) refers to the Declaration provided by Chad Waetzig on January 16, 2025 and attached as an exhibit (ECF No. 30) to Defendant’s Amended Motion to Compel Arbitration.

3. “Complaint” refers to the First Amended Complaint filed on September 20, 2024 (ECF No. 5) in the above-captioned action.

4. “Communication(s)” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise) and includes original and all non-identical copies of all documents, as defined herein, sent by you or received by you from any person, as well as any documents reflecting or recording the content of any oral communications in any form (including, without limitation, inter-office and intraoffice memoranda, e-mail and other communications). The term “communication(s)” also includes, without limitation, all inquiries, discussions, conversations, correspondence, negotiations, agreements, understandings, meetings, notices, requests, responses, demands, complaints, press, publicity or trade releases by any manner or means whatsoever, including but not limited to by speech, writing, language (machine, foreign, or otherwise), computer electronics of any kind (including e-mail and/or instant messaging), magnetic tape, videotape, graphs, symbols, signs, magnetic and/or optical disks, floppy disks, compact discs, CD ROM discs, sound, radio and / or video signals, telecommunication, telephone, teletype, facsimile, telegram, microfilm, microfiche, photographic film of all types, and/or media of any kind.

5. “Concerning” means relating to, referring to, describing, evidencing, or constructing.

6. “Consent” has the meaning set forth in 47 CFR § 64.1200(f)(8) for “prior express written consent.”

7. “Crunch, LLC”, “Defendant”, “You”, and/or “Your” refers collectively to Defendant and all of its officers, directors, employees, agents, attorneys, affiliates, parents, subsidiaries, predecessors, successors and assigns, together with all of the officers, agents, employees, directors, representatives, successors and assigns of the foregoing.

8. “Describe” or “Describing” when used in relation to any process, policy, act or event means to explain the process, policy, act or event in complete and reasonable detail, stating the time, date, and location, identifying all Persons participating or present, and Identifying all Documents relating thereto.

9. “Document” means anything which may be considered to be a document or tangible thing within the meaning of the applicable rules of court and includes, without limitation, any written, printed, typewritten, handwritten, videotaped, recorded or other graphic matter or computer-generated or stored information, whether produced in “hard” copy or other tangible medium or presently stored within the memory of a computer or other data storage device, such as tapes, hard or floppy disc drives, now or at any time in Your possession, custody or control; and, includes generally and without limiting the generality of the foregoing definitions, any correspondence, letters, email, telegrams, telexes, cables, transcripts,

agreements, contracts, notes, memoranda, jottings, projections, reports, opinions, work papers, diaries, daybooks, notebooks, calendars, address and telephone records, expense records and vouchers, time records, personnel records, minutes, summaries of any Communications, reports or summaries of investigations, books of account, journals, ledgers, journal entries, accounting books and records, spreadsheets, micro-fiche cards, microfilms, photographs, films, appraisals, surveys, financial statements, financial forecasts, computer programs, computer printouts, manuals, guides, books, magazines, newspapers, publications, and all preliminary versions and drafts, revisions of, or notations on any of the foregoing, including all non-identical copies and drafts of the foregoing, and all summaries, analyses or reports relating or referring in whole or in part to any of the foregoing.

10. “Electronic Records” shall mean the original (or identical duplicate when the original is not available) and any non-identical copies (whether nonidentical because of notes made on copies or attached comments annotations, marks, transmission notations, or highlighting of any kind) of writings of every kind of description inscribed by mechanical, facsimile, electronic, magnetic, digital, or other means. Electronic records includes, by the way of example and not by limitation, computer programs (whether private, commercial, or work-in-progress), programming notes and instructions, activity listings of email transmittals and receipts, output resulting from the use of any software program (including word processing documents,

spreadsheets, database files, charts, graphs and outlines), electronic mail, and any and all miscellaneous files and file fragments, regardless of the media on which they reside and regardless of whether said electronic exists in an active file, deleted file, or file fragment. Electronic records includes without limitation any and all items stored on computer memories, hard disks, diskettes and cartridges, network drives, network memory storage, archived tapes and cartridges, network drives, network memory storage, archived tapes and cartridges, backup tapes, floppy disks, CD-ROMs, removable media, magnetic tapes of all types, microfiche and any other media used for digital data storage or transmittal. Electronic records also include the file, folder tabs, and containers and labels appended to or associated with each original and non-identical copy.

11. “Identify” or “Identity” shall mean, in addition to any information specified in a discovery request:

- a. When used in reference to an incident or action, it means to provide a detailed description of the event or occurrence, including appropriate references to dates, times, Persons and Documents.
- b. When used in reference to a natural Person mean to state the individual’s full name, his or her present business and home addresses (or, if unknown, the last known business and home addresses), his or her telephone number, and his or her positions, business affiliations and addresses at all times relevant to the discovery request in question.
- c. When used in reference to a Person other than a natural Person mean to state its full name; the address of its principal place of business; the nature of the entity, if known (e.g., type of government agency) and the principal Persons

involved with the entity at all times relevant to the Request for Production in question.

12. “Including” is used to emphasize certain types of information requested and should not be construed as limiting the discovery request in any way.

13. “Metadata” includes all information concerning the date(s) the documents were created, modified, or distributed, the format of the documents, the owner or custodian of the documents, and the author(s) and recipient(s) of the documents.

14. “Person(s)” refers to natural persons, proprietorships, governmental agencies, corporations, partnerships, trusts, joint ventures, groups, associations, organizations, and all other entities.

15. “Refer”, “relate”, “referring” or “relating” means all documents which describe, evidence, constitute, concern, comprise, summarize, explicitly or implicitly refer to, were reviewed in conjunction with or were created, generated, or maintained as a result of the subject matter of the discovery request, including, without limitation, all documents which reflect, record, memorialize, embody, discuss, evaluate, consider, review, or report on the subject matter of the Request for Production.

INSTRUCTIONS

1. You are required to provide all information that is available to You, including information in the possession of Your attorneys, agents or others under Your control and not merely information known by virtue of Your own personal knowledge.

2. Unless specified otherwise, the relevant time period for each Request is for the period from August 1, 2023 to the present time (subject to the requirement that these Requests are ongoing and should be supplemented as additional information or documents are discovered).

3. If You claim any sort of privilege, whether based on statute or otherwise, as a ground for not answering, state the following:

- a. The date of any such information;
- b. The name, the present or last known home and business addresses and the telephone numbers of those Persons who prepared, produced, reproduced, or were recipients of said information, or were a speaker of or listener to an oral Communication.
- c. A description of the subject matter sufficient to identify it without revealing the information for which the privilege is claimed; and
- d. Each and every fact or basis upon which You claim any such privilege.

4. These Requests for Production shall be deemed subject to the duty to supplement as set forth in Federal Rules of Civil Procedure 26(e). You are obligated to change, supplement, and correct Your answers to conform to all available information, including such information as becomes available to You after Your answers hereto are served.

5. If You object to any portion or aspect of any Request for Production provide all information responsive to the portion to which You do not object.

RULES OF CONSTRUCTION

1. The masculine, feminine, or neuter pronoun shall include all genders.
2. The use of a verb in any tense includes the use of that verb in all other tenses.
3. The terms “all” and “each” should be construed as “all and each.” The word “all” means “any and all,” and the word “any” means “any and all.”
4. The term “including” means “including, but not limited to.” The term “include(s)” means “include(s), without limitation.”
5. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
6. The use of the singular of any word includes the plural and vice versa.
7. The use of any tense of any verb shall also include within it meaning all other tenses of that verb.

INTERROGATORIES

1. Identify each version of the “Membership Terms & Conditions” that was accessible via the hyperlink described in Paragraph 7 of the Waetzig Declaration at any time between August 1, 2023 and January 2, 2024, along with the dates that each of such version was accessible via such hyperlink.

2. Describe the basis for Your knowledge of the information provided in response to Interrogatory No. 1 (including by Describing Your practices of storing the versions of the “Membership Terms & Conditions” that were accessible via the hyperlink described in Paragraph 7 of the Waetzig Declaration between August 1, 2023 and January 2, 2024, Identifying the repositories of Documents, Electronic Records, or Communications where such versions were stored, and Describing the way in which You identified the dates that each such version was accessible via such hyperlink).

3. Identify all individuals with knowledge of when the different versions of the “Membership Terms & Conditions” were accessible via the hyperlink described in Paragraph 7 of the Waetzig Declaration between August 1, 2023 and January 2, 2024, as well as the dates that each of those individual versions of the Membership Terms & Conditions were accessible via such hyperlink.

4. Describe the Communications sent by You to individuals who signed up to reserve a rate on Your website (at the webpage found at <https://info.crunch.com/rate-reservations>) between August 1, 2023 and January 2, 2024, including by providing the specific text of each email, text message, phone call, or other form of Communication received by individuals who reserved a rate at such webpage during that time period (in other words, Describe of every iteration of any pro forma “template” of any email, text message, phone call, or other form of

Communication sent to individuals who reserved a rate via such webpage during that time period).

5. Describe any changes made to the rate reservation webpage accessible at <https://info.crunch.com/rate-reservations> in effect at any time between August 1, 2023 and January 2, 2024, and Identify the dates on which any such changes were made. If the rate reservation webpage did not change between August 1, 2023 and January 2, 2024, indicate that in Your response.

6. Identify all individuals with knowledge of when the different versions of the rate reservation webpage accessible at <https://info.crunch.com/rate-reservations> were effect at any time between August 1, 2023 and January 2, 2024, and all individuals with knowledge of when the dates on which any changes to that page were made.

REQUESTS FOR PRODUCTION

1. Each version of the “Membership Terms & Conditions” accessible via the hyperlink described in Paragraph 7 of the Waetzig Declaration at any time between August 1, 2023 and January 2, 2024, along with Documents or Electronic Records sufficient to show the dates on which each such version was accessible via such hyperlink.

2. Representative samples of each of the Communications sent by You to individuals who signed up to reserve a rate on Your website (at the webpage found

at <https://info.crunch.com/rate-reservations>) between August 1, 2023 and January 2, 2024 (i.e., copies of every iteration of any pro forma “template” of any email, text message, phone call, or other form of Communication sent to individuals who reserved a rate via such webpage during that time period).

3. Screenshots sufficient to show each version of the rate reservation webpage accessible at <https://info.crunch.com/rate-reservations> in effect at any time between August 1, 2023 and January 2, 2024, along with Documents or Electronic Records sufficient to show the dates on which each such version was accessible via such webpage.

REQUEST FOR ADMISSION

1. Admit that the version of the Terms & Conditions attached hereto as **Exhibit A** is the version of the Terms & Conditions that was accessible by visitors to the Crunch+ website (www.crunchplus.com) at the time Plaintiff subscribed to the Crunch+ service as alleged in Paragraph 4 of the Waetzig Declaration.

Dated: January 24, 2024

Respectfully submitted,

/s/ Elliot O. Jackson

Elliot O. Jackson

NY Attorney Reg. No. 6076798

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EXHIBIT A

Terms & Conditions

Effective January 1, 2020

This is a Terms of Use Agreement for use of crunchlive.com website (hereinafter referred to as the “Website”, “Crunch Live”, and/or the “Services”). This Website is owned by Crunch, LLC (hereinafter referred to as “Crunch”).

THE INFORMATION PRESENTED ON THIS WEBSITE IS IN NO WAY INTENDED AS MEDICAL ADVICE OR AS A SUBSTITUTE FOR MEDICAL TREATMENT. THIS INFORMATION SHOULD ONLY BE USED IN CONJUNCTION WITH THE GUIDANCE AND CARE OF YOUR PHYSICIAN. CONSULT YOUR PHYSICIAN BEFORE BEGINNING ANY DIET, NUTRITION, OR FITNESS PLAN OFFERED THROUGH THE WEBSITE. YOUR PHYSICIAN SHOULD ALLOW FOR PROPER FOLLOW-UP VISITS AND INDIVIDUALIZE YOUR DIET, NUTRITION, OR FITNESS PLAN AS APPROPRIATE. NOTHING STATED OR PRESENTED ON THE WEBSITE IS INTENDED TO BE A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT. ALWAYS SEEK THE ADVICE OF YOUR PHYSICIAN OR OTHER QUALIFIED HEALTH CARE PROVIDER IF YOU HAVE ANY QUESTIONS REGARDING A MEDICAL CONDITION, YOUR DIET, NUTRITIONAL SUPPLEMENTS, AN EXERCISE REGIMEN, OR ANY OTHER MATTER RELATED TO YOUR HEALTH AND WELL-BEING.

By registering as a subscriber or by using Crunch Live in any way, you accept these Terms of Use (“Agreement”), which forms a binding agreement between you and Crunch. If you do not wish to be bound by this Agreement, do not use Crunch Live. Crunch reserves the right to refuse or cancel your account. We also reserve the right to cancel your subscription should you violate any provision of this Agreement, or any other posted policy on the Website. The contents of this Website, including the videos, text, graphics, images, and information obtained from Crunch Live’s third-party content providers, sponsors, suppliers, and licensors (collectively “Providers”), and any other materials are to be used for informational purposes only.

CHILDREN’S USE

Crunch Live is not directed toward children under the age of 13 and we do not knowingly collect information from children under the age of 13 through the Website. If you believe that a child has provided information to us through the Website, please contact us by email at Info@crunchlive.com

LICENSE AND ACCESS

Crunch grants you a limited license to access the Website. This license is solely for your individual use and may not be trans

SUBSCRIPTION ACCOUNT

You must register as a subscriber by providing a user name, password, and valid email address. You must provide complete and accurate registration information to Crunch Live and notify us if your information changes. You are responsible for maintaining the confidentiality and security of your password and all other account information, and you are fully responsible and liable for all access to and use of Crunch Live that occur under your password or account.

TRIAL PERIOD

Your Crunch Live subscription may start with a free trial. The free trial period of your subscription lasts for one week, or as otherwise specified during sign-up. Free trials may not be combined with any other offers. You must have Internet access and a current valid, verified and accepted payment method as indicated during sign-up (“Payment Method”), to use our service. If you or another subscriber of your household has been a Crunch Live subscriber within the last 12 months, or if your Payment Method, physical address or email address have been associated with a Crunch Live subscription, or if you are streaming from a Crunch Live ready device that has been previously activated on a different Crunch Live account, you are not eligible to receive a free trial.

If your Crunch Live account is terminated due to a violation of this Agreement, Crunch will not reimburse you for the remainder of paid month. Nor will reimbursements be made for subscriber cancellations that are made outside of the time period indicated in this Agreement.

Monthly - Crunch Live monthly subscribers are billed monthly. All monthly subscriptions are renewed automatically until canceled in accordance with the terms set forth herein. Subscribers may cancel their subscription by cancelling 5 days prior to the monthly renewal date in order to avoid Crunch Live charges for the following month. To cancel monthly subscription, click the Cancel Subscription link under My Account.

PIF

Crunch Live PIF subscribers are billed annually. All PIF subscriptions are renewed automatically until canceled in accordance with the terms set forth herein. Subscribers may cancel their subscription by cancelling 5 days prior to the annual renewal date in order to avoid Crunch Live charges for the following year term. A pro-rated refund will occur based on cancellation date and expiration date. To cancel PIF subscription click the Cancel Subscription link under My Account.

LIMITATION OF LIABILITY

To the fullest extent permitted by applicable laws, Crunch will in no event be liable to you or any third party for any indirect, consequential, exemplary, incidental, special or punitive damages, including lost profit damages arising from or in connection with any use of the Website and/or the Services, and/or any website with which they are linked, and/or any content, information, products or services accessible through the Website and/or the Services, even if Crunch has been advised of the possibility of such losses or damages. Notwithstanding anything to the contrary contained herein, the aggregate liability of Crunch to you for any cause whatsoever and regardless of the form of the action, will at all times be limited to the amount paid, if any, by you to Crunch for Crunch Live Services.

INDEMNITY

You agree to indemnify, defend, and hold harmless Crunch and its affiliates, directors, officers, employees, and agents, from and against all claims, damages, losses and costs that:

1. Arise from your activities on or associated with your use of Crunch Live
2. Assert a violation by you of any term of this Agreement
3. Assert that any content you submitted to Crunch violates any law or infringes any third party right, including any intellectual property or privacy right.

DISCLAIMER

Crunch reserves the right to modify Crunch Live. You are responsible for providing your own access (e.g., computer, mobile device, Internet connection, etc.) to Crunch Live. Crunch has no obligation to screen or monitor any content and does not guarantee that any content available on Crunch Live complies with this Agreement or is suitable for all users.

Crunch provides Crunch Live on an “as is” and “as available” basis. You therefore use Crunch Live at your own risk. Crunch expressly disclaims any and all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose, non-infringement, and any other warranty that might arise under any law. Without limiting the foregoing, Crunch makes no representations or warranties:

- That Crunch Live will be permitted in your jurisdiction
- That Crunch Live will be uninterrupted or error-free
- Concerning any content submitted by any subscriber
- Concerning any third party’s use of content that you submit that Crunch Live will meet your personal or professional needs
- That Crunch will continue to support any particular feature of Crunch Live. Concerning sites and resources outside of Crunch Live, even if linked to from Crunch Live.

- To the extent that a secondary party may have access to or view Crunch content on your computer or mobile device, you are solely responsible for informing such party of all disclaimers and warnings in this Agreement.

To the extent any disclaimer or limitation of liability does not apply, all applicable express, implied, and statutory warranties will be limited in duration to a period of thirty (30) days after the date on which you first used Crunch Live, and no warranties shall apply after such period.

COPYRIGHT

Copyright © Crunch IP Holdings, LLC. All materials and contents contained on the Website (including but not limited to the text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations and software), and the Website itself, are copyrighted materials belonging exclusively to Crunch, Crunch IP Holdings, LLC, or its content suppliers and are protected by United States and international copyright law. Crunch and Crunch IP Holdings, LLC enforces its copyright interests to the fullest extent permitted under the law, and shall seek civil and criminal remedies where appropriate, including the remedies provided for under sections 501 et seq. of Title 17 of the U.S. Code. All rights are reserved.

HEALTH AND MEDICAL CONCERNS

Crunch Live includes information and instruction relating to exercise and fitness. You acknowledge and agree that the following warnings and disclaimers shall apply to all such information, instruction and services.

Before participating in any exercise program or using any fitness products or services that may be described and/or made accessible in or through Crunch Live, we strongly recommend that you consult with a physician or other healthcare provider. Crunch, its staff and the content-providers are not licensed medical care providers, are not rendering personal medical advice or treatment, and have no expertise in advising on, diagnosing, examining, or treating medical conditions of any kind, or in determining the effect of any specific exercise on a known or unknown medical condition.

Crunch Live services are not intended to be a substitute for professional medical advice, diagnosis, or treatment. You acknowledge and agree that when participating in any exercise or exercise program, and/or when using any fitness products or services, there is the possibility of physical injury and/or death, and you assume the risk and responsibility for any such results.

You should never disregard medical advice or delay seeking it because of a statement you have read on the Website and/or the Services. Crunch Live should not be used in lieu of advice given by qualified medical professionals such as your doctor or registered dietitian. It is important that Crunch Live is used only in conjunction with qualified medical guidance. If you know or suspect that you may be pregnant, have an eating disorder, have diabetes, or have any other physical or medical condition, it is imperative that you seek the advice of your doctor prior to using the Website and/or the Services.

In addition to consulting with your doctor before beginning an exercise or dietary program, keep the following checklist in mind when developing your program in conjunction with your health care provider. Bear in mind that this checklist is not exhaustive and does not take the place of a consultation with your healthcare provider. After exercise:

- Do you frequently experience chest pains?
- Do you get dizzy when you exercise?
- Are you breathless after exercising?
- Do you take medication for high blood pressure?
- Do you have joint problems?
- Do you have a medical condition, which might need special attention when exercising, for example diabetes?
- Have you been physically active in the past?
- Do you have a heart condition that requires supervised physical activity?

If you experience any discomfort or pain during an exercise routine you must immediately cease the activity and seek the assistance of a physician.

INTERNATIONAL USE

Due to the global nature of the Internet, you acknowledge and agree that you are obliged to comply with all applicable laws, rules and regulations regarding the access to and use of Crunch Live. By way of example only, you acknowledge and agree that you are obliged to comply with all applicable laws regarding the transmission of technical data exported from the United States or the country in which you reside, and that restrictions on access to and/or use of some Site Content may apply to users based on their place of domicile, residence and/or use.

GOVERNING LAW

This Agreement shall be governed by the laws of the State of New York, United States of America, without regard to principles of conflicts of law. The Uniform Commercial Code, the Uniform Computer Information Transaction Act, and the United Nations Convention of Controls for International Sale of Goods shall not apply.

DISPUTES

Any action arising out of or relating to this Agreement or your use of the Crunch Live Service must be commenced in the state or federal courts located in New York County, New York, United States of America (and you consent to the jurisdiction of those courts). In any such action, Crunch and you irrevocably waive any right to a trial by jury.

INTERPRETATION; SEVERABILITY; WAIVER; REMEDIES

Headings are for convenience only and shall not be used to construe the terms of this Agreement. If any term of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, that term will be severed from this Agreement. No failure or delay by Crunch in exercising any right hereunder will waive any further exercise of that right. Crunch's rights and remedies hereunder are cumulative and not exclusive.

SUCCESSORS; ASSIGNMENT; NO THIRD-PARTY BENEFICIARIES

This Agreement is binding upon and shall inure to the benefit of both parties and their respective successors, heirs, executors, administrators, personal representatives, and permitted assigns. You may not assign this Agreement without Crunch's prior written consent. No third party shall have any rights hereunder.

NOTICES

You consent to receive all communications including notices, agreements, disclosures, or other information from Crunch electronically. Crunch may provide all such communications by email or by posting them on the Crunch Live Site. Nothing herein shall limit Crunch's right to object to subpoenas, claims, or other demands.

MODIFICATION

This Agreement may not be modified except by a revised Terms of Service posted by Crunch on the Crunch Live Site or a written amendment signed by an authorized representative of Crunch. A revised Terms of Service will be effective as of the date it is posted on the Crunch Live Site.

PRIVACY POLICY

By agreeing to this Agreement, you also consent to the privacy practices set forth in our Privacy Policy set forth on crunch.com at <https://www.crunch.com/privacy-policy>.

ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between Crunch and you concerning the subject matter hereof and supersedes all prior agreements and understandings regarding the same.

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About